

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF LABOR AND INDUSTRY

Ken B. Peterson, Commissioner,  
Minnesota Department of Labor and  
Industry,

Complainant,

vs.

Family Construction, Inc.

Respondent.

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
ORDER UPON DEFAULT**

The above-entitled matter came before Administrative Law Judge Laura Sue Schlatter (ALJ) pursuant to a Notice and Order for Hearing and Prehearing Conference and a Motion for Default Judgment filed by the Occupational Safety & Health Review Board (Department) on June 30, 2014.

Jackson Evans, Assistant Attorney General, appeared on behalf of the Occupational Safety & Health Review Board (Department). Gerardo Lopez Requena, Roofing Four, LLC (Respondent) did not appear.

**STATEMENT OF THE ISSUE**

Whether the penalties assessed against Respondent for the violations set out in Occupational Health and Safety (OSHA) Citation No. 1, Items 1a, and 1b and 2 should be affirmed.

**SUMMARY OF RECOMMENDATION**

The Administrative Law Judge concludes that Respondent is in default and therefore deems true and proven the allegations in the Summons and Complaint, as set forth in the Notice and Order for Hearing and Prehearing Conference, and affirms all penalties set forth in OSHA Citation No. 1. items 1a and 1b and 2.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

## **FINDINGS OF FACT**

1. The Commissioner is responsible for enforcement of OSHA regulations in Minnesota. Respondent is an employer engaged in the business of roofing.

2. On September 6, 2013, the Commissioner conducted an OSHA inspection of the Respondent and, on September 27, 2013, issued a citation and notification of penalties for OSHA violations.<sup>1</sup>

3. Respondent filed a Notice of Contest with the Department.<sup>2</sup>

4. In conformity with Minn. R. 1400.5700, the Notice and Order for Hearing requires that any party intending to “appear at the hearing must file a Notice of Appearance form and return it to the Administrative Law Judge within 20 days of the date of service” of the Notice and Order for Hearing.<sup>3</sup>

5. In conformity with Minn. R. 1400.6000, the Notice and Order for Hearing in this matter also includes the following statements:

Respondent’s failure to appear at the hearing or prehearing may result in a finding that the Respondent is in default, that Complainant’s allegations contained in this Notice and Order may be accepted as true, and that Complainant’s proposed action may be upheld.<sup>4</sup>

6. Respondent did not file a Notice of Appearance with the undersigned.

7. No one appeared at the July 25, 2014 Prehearing Conference on behalf of Respondent. No request was made for a continuance, nor was any communication received by the undersigned from Respondent, prior to the July 25, 2014 Prehearing Conference.

8. Respondent’s failure to appear at the Prehearing Conference was without consent of the Administrative Law Judge.

9. Because Respondent failed to appear at the Prehearing Conference, Respondent is in default.

10. Pursuant to Minn. R. 1400.6000, the allegations contained in the Notice and Order for Hearing, appended hereto as Attachment A, are taken as true, deemed proven without further evidence, and incorporated by reference into these Findings of Fact.

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<sup>1</sup> See Attachment A at Notice and order for Hearing and Prehearing Conference, p. 1.

<sup>2</sup> *Id.* at correspondence from the Department to Respondent, p.19.

<sup>3</sup> *Id.* at 2.

<sup>4</sup> *Id.*, at p.2.

11. On June 30, 2014, the Department filed a Notice of Motion and Motion for Default Judgment in the matter, wherein it notified Respondent that, to contest the Motion, Respondent must file a written response with the undersigned Administrative Law Judge within ten working days of the date the Motion was received.

12. The Respondent failed to file a response to the Motion.

Based on these Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS OF LAW**

1. The Minnesota Department of Labor and Industry and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50, 182.661, subd. 3 and 182.664.

2. The Respondent received due, timely and proper notice of the charges against it, and of its opportunity to respond to the Motion. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. The Minnesota Department of Labor and Industry has complied with all relevant procedural requirements of statute and rule.

4. Minnesota Rules part 5210.0570, subpart 1, requires that the Respondent file an answer within 20 days, and if the Respondent fails to do so, subpart 4 states that any allegation not denied is deemed admitted and any affirmative defense not asserted is deemed waived.

5. Under Minn. R. 1400.6000, when a party defaults by failing to appear at a prehearing conference without the prior consent of the administrative law judge, the allegations and the issues set out in the relevant pleadings may be taken as true and deemed proved.

6. The Respondent is in default as a result of its failure to file an answer to the Complaint and the Motion for Default Judgment, and its failure to appear at the scheduled prehearing conference.

7. Based upon the facts set forth in the Notice and Order for Hearing and the attachments thereto, Respondent has violated Minn. Stat. § 182.65 *et seq.*

Based upon these Conclusions of Law, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

## ORDER

IT IS HEREBY ORDERED that the penalties imposed on Respondent for OSHA citations issued following an inspection on September 6, 2013 be **AFFIRMED**.

Dated: July 31, 2014

s/LauraSue Schlatter  
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LAURASUE SCHLATTER  
Administrative Law Judge

Reported: Default

## NOTICE

Pursuant to Minn. Stat. § 182.661, subd. 3, this Order is the final decision in this case. Under Minn. Stat §§ 182.661, subd. 3, and 182.664, subd. 5, the employer, employee or their authorized representatives, or any party, may appeal this Order to the Minnesota Occupational Safety and Health Review Board within 30 days following service by mail of this Decision and Order.